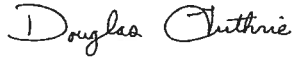


REPORT OF THE PRESIDENT

July 30, 2020

RESOLUTION APPROVING AND RATIFYING L.A. LOMOD'S EXECUTION OF THE NINTH AMENDMENT TO THE PROJECT-BASED SECTION 8 CONTRACT ADMINISTRATION ANNUAL CONTRIBUTIONS CONTRACT ("ACC") AND AUTHORIZING THE PRESIDENT OF L.A. LOMOD TO EXECUTE ANY FUTURE CARES ACT/COVID-19 RELATED ACC AMENDMENTS



Douglas Guthrie
President & CEO



Connie Loyola Calumnag
L.A. LOMOD Director

Purpose: The Los Angeles LOMOD Corporation ("L.A. LOMOD") seeks approval and ratification of its execution of the Ninth Amendment to the Performance-Based Annual Contributions Contract ("ACC") with the U.S. Department of Housing and Urban Development ("HUD"), also known as the "COVID-19 Supplemental Payments Amendment," which gives L.A. LOMOD additional funds for administering requests for coronavirus (COVID-19) supplemental funding made available under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Issues: Section 1 of Article V of L.A. LOMOD's Bylaws states, in pertinent part, that:

"[A]pproval of the Board of Commissioners of the Housing Authority of the City of Los Angeles shall be required for the corporation to execute the Annual Contributions Contracts with U. S. Department of Housing and Urban Development ("HUD") for the administration of Section 8 HAP Contracts throughout the entire State of California, and any other state deemed appropriate by the board of directors and with the consent of the Board of Commissioners of the Housing Authority of the City of Los Angeles."

In March 2003, the Housing Authority of the City of Los Angeles ("HACLA") Board of Commissioners ratified the execution of the ACC between HUD and L.A. LOMOD, under which L.A. LOMOD serves as the Performance Based Contract Administrator ("PBCA") for Southern California. In the process of conducting a national solicitation for the PBCA program, HUD has issued eight ACC amendments since 2011 to extend the term of the original ACC and to revise the required tasks. Under the Eighth Amendment, the ACC term runs through January 31, 2021 subject to availability of appropriations.

Current Request:

Pursuant to the Coronavirus Aid, Relief, and Economic Security ("CARES") Act (Public Law 116-136), enacted by the U.S. Congress on March 27th, supplemental funding was made available to the Section 8 Project-Based Rental Assistance ("PBRA") Program to maintain normal operations and take other necessary actions during the period the PBRA Program is impacted by the coronavirus, including for assistance to owners or sponsors of properties participating in the PBRA Program.

On July 13, 2020, HUD sent the Ninth Amendment to the ACC, entitled the "COVID-19 Supplemental Payments Amendment," to PBCAs across the country. Under this Amendment, HUD has tasked PBCAs with processing owner requests for said supplemental funds made available under the CARES Act. Due to the short processing timeline for these CARES Act funding requests and disbursements, the turnaround time for the PBCAs to sign the Ninth Amendment and return it to HUD was very short: the executed Amendment was due by July 17, 2020.

The Ninth Amendment allows PBCAs to collect, analyze and verify COVID-19 Supplemental Payment ("CSP") requests from owners of Section 8 projects in accordance with HUD regulations, requirements, a pending HUD Notice, and other HUD directives, handbooks, forms, memoranda, notices, HUD website postings. Owners will have two (2) weeks to submit their requests and PBCAs will have ten (10) business days upon receipt to process the requests to receive full compensation. L.A. LOMOD's work under the Ninth Amendment is vital to assisting HUD with expeditiously process and verify supplemental funding requests for owners of Section 8 projects in Southern California.

Additionally, should HUD issue any other emergency ACC amendments related to the CARES Act or COVID-19, authority is requested to enable the President of L.A. LOMOD, or his/her designee, to execute the amendment(s) and any related documents, subject to review and approval of legal counsel.

Funding: The Chief Administrative Officer confirms the following:

Source of Funds: L.A. LOMOD receives Section 8 administrative fees under the PBCA ACC for administering Housing Assistance Payments to owners of Section 8 project-based buildings.

Budget and Program Impact: The administrative fees received under the ACC and amendments cover all of L.A. LOMOD's expenditures. No additional staffing is needed for the new task. Although it is unknown how many properties will submit requests for CSP funds, it is expected that the majority of covered owners will submit requests for CARES Act funding, which could generate a gross revenue of approximately \$90,000 in administrative fees for the additional task.

Attachment:

1. Resolution
2. Ninth ACC Amendment

RESOLUTION NO. _____

RESOLUTION APPROVING AND RATIFYING L.A. LOMOD'S EXECUTION OF THE NINTH AMENDMENT TO THE PROJECT-BASED SECTION 8 CONTRACT ADMINISTRATION ANNUAL CONTRIBUTIONS CONTRACT ("ACC") AND AUTHORIZING THE PRESIDENT OF L.A. LOMOD TO EXECUTE ANY FUTURE CARES ACT/COVID-19 RELATED ACC AMENDMENTS

WHEREAS, in 1973, the Housing Authority of the City of Los Angeles ("Housing Authority") created the Los Angeles LOMOD Corporation ("L.A. LOMOD"), a nonprofit corporation, to increase affordable housing in the City of Los Angeles; and

WHEREAS, on July 26, 2002 the Board of Directors adopted amendments to L.A. LOMOD's Articles of Incorporation and Bylaws as requested by the U. S. Department of Housing and Urban Development ("HUD") in connection with the L.A. LOMOD's proposal to provide contract administration services for Section 8 Project-based Housing Assistance Payments ("HAP") Contracts in ten Southern California counties; and

WHEREAS, Article V of L.A. LOMOD's Bylaws require approval of the Board of Commissioners of the Housing Authority for L.A. LOMOD to execute the Annual Contributions Contracts ("ACC"); and

WHEREAS, in March 2003, the Board of Commissioners of the Housing Authority ratified the execution of the ACC between HUD and L.A. LOMOD; and

WHEREAS, subsequent amendments to the ACC were issued by HUD in 2011, 2012, 2014, 2016, 2017, 2018, and 2019; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act (Public Law 116-136), enacted by the U.S. Congress on March 27th, makes available supplemental funding to the Section 8 Project-Based Rental Assistance ("PBRA") Program to maintain normal operations and take other necessary actions during the period the program is impacted by the coronavirus, including assistance to owners or sponsors of properties participating in the PBRA Program; and

WHEREAS, HUD issued the Ninth Amendment to the ACC, referred to as the "COVID-19 Supplemental Payments Amendment," under which it tasked performance based contract administrators ("PBCAs") like L.A. LOMOD with processing owner requests for said supplemental funds under the CARES Act and also established compensation levels for PBCAs; and

WHEREAS, HUD issued the Ninth Amendment to the ACC on or about July 13, 2020, and due to the short timeframe of the availability and processing of funds, required L.A. LOMOD to execute said amendment by July 17, 2020 in order to facilitate their nationwide obligation of funds; and

WHEREAS, to comply with HUD's timeline, the President of L.A. LOMOD executed the Ninth Amendment to the ACC on or about July 17, 2020 in order to meet the HUD prescribed submittal deadline; and

WHEREAS, the Housing Authority Board of Commissioners desires to approve and ratify the Ninth Amendment to the ACC; and

WHEREAS, should HUD issue any other amendments related to the CARES Act or COVID-19, L.A. LOMOD is requesting approval to execute the amendment(s) and any related documents, subject to the review and approval of legal counsel.

NOW, THEREFORE, BE IT RESOLVED that the Housing Authority Board of Commissioners hereby ratifies and approves the execution of the Ninth Amendment to the Project-Based Section 8 Contract Administration Annual Contributions Contract ("ACC") and further delegates authority to the President of L.A. LOMOD, or her/his designee, to execute any future CARES Act or COVID-19 related amendments to the ACC, subject to review and approval of legal counsel.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

APPROVED AS TO FORM:

HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES

BY: _____
General Counsel James Johnson

BY: _____
Chairperson Ben Besley

DATE ADOPTED: _____

UNITED STATES
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
OFFICE OF MULTIFAMILY HOUSING PROGRAMS
PROJECT-BASED SECTION 8 CONTRACT ADMINISTRATION

NINTH AMENDMENT of TERM, INCENTIVE-BASED
PERFORMANCE STANDARDS TASKS, and FEES to

PERFORMANCE-BASED ANNUAL CONTRIBUTIONS
CONTRACT,

AS AMENDED BY THE EIGHTH AMENDMENT

(COVID-19 SUPPLEMENTAL PAYMENTS
AMENDMENT)

This Ninth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees to the Performance-Based Annual Contributions Contract referenced in Section I. A. immediately below, as amended by the Eighth Amendment ("Ninth Amendment"), provides as follows:

I. RECITALS

- A. The United States of America, acting by and through the Secretary of the Department of Housing and Urban Development ("HUD"), and 42 public housing agencies ("PHAs"), including the PHA identified on the Signature Page of this Ninth Amendment, previously entered into a Performance-Based Annual Contributions Contract ("ACC") for the administration of project-based section 8 Housing Assistance Payments ("HAP") contracts and related services with respect to covered section 8 units for the geographic area served by the PHA, as indicated on the Signature Page.* The ACCs were entered into pursuant to section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, on various dates between June 2000 and July 2005 following the award of each ACC.
- B. Section 2 d (2) of the ACC provides for an initial term of 36 calendar months, which commenced on the first day of the month of HUD's first assignment to the PHA of then existing HAP contracts for covered units.
- C. Consistent with all the terms and conditions of Section 2 of the ACC, HUD elected to renew each of the ACCs for two additional 12-month terms.
- D. Before expiration of the second 12-month renewal term, the Parties entered into one or more amendments to make various changes to the ACC and to extend the ACC term through September 30, 2011.
- E. Before September 30, 2011, the Parties entered into an agreement effective October 1, 2011 captioned "Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees" ("First Amendment") to provide for a subsequent renewal term of the ACC through March 31, 2012 and for three additional, successive renewal terms of three calendar months each, which HUD was entitled to exercise at HUD's sole discretion and option. See First Amendment, Section II A. HUD exercised each of the three additional, successive renewal terms, the last of which expired on December 31, 2012. Further, the First Amendment revised various substantive terms of the ACC

* The PHA identified on the Signature Page is sometimes referred to herein as the Performance-Based Contract Administrator ("PBCA"). Collectively, HUD and the PHA are referred to herein as "the Parties."

as set forth in the remaining provisions of Section II of the First Amendment. See First Amendment, Section II B. and C.

- F. Before December 31, 2012, the Parties entered into an agreement effective January 1, 2013 captioned "Second Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees" ("Second Amendment") to provide for a subsequent renewal term of the ACC through March 31, 2013 and for seven additional, successive renewal terms of three calendar months each, which HUD was entitled to exercise at HUD's sole discretion and option. See Second Amendment, Section II A. HUD exercised each of the seven successive renewal terms, the last of which ended on December 31, 2014. The Second Amendment did not alter any of the substantive terms of the ACC, as amended by the First Amendment but, for clarity, set forth the changes to the substantive terms made by the First Amendment. See Second Amendment, Section II B. and C.
- G. Before December 31, 2014, the Parties entered into an agreement effective January 1, 2015 captioned "Third Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees" ("Third Amendment") to provide for a subsequent renewal term of the ACC through June 30, 2015 and for five additional, successive renewal terms of six calendar months each, which HUD was entitled to exercise at HUD's sole discretion and option. See Third Amendment, Section II A. The Third Amendment extended the term of the ACC, as amended by the First Amendment, without altering any of the substantive terms.
- H. During the term of the Third Amendment, a decision of the United States Court of Appeals for the Federal Circuit became final in which the court concluded that "Performance-Based Annual Contribution Contracts (PBACCs) are procurement contracts" and that, "[w]hen using a procurement contract, an agency must adhere to federal procurement laws, including the Competition in Contracting Act (CICA), 41 U.S.C. § 3301, as well as the Federal Acquisition Regulation (FAR)." U.S. v. CMS Contract Management Services, et al., 745 F.3d 1379, 1381 (Fed. Cir. 2014), cert. denied, 575 U.S. 962 (2015). Thereafter, HUD began preparing a solicitation for the procurement of PBCA services consistent with the court's decision ("Solicitation").
- I. HUD exercised the first two additional, successive renewal terms provided for in the Third Amendment, the second of which ended on June 30, 2016. Section II A. of the Third Amendment required HUD to give notice by June 1, 2016, in order to elect the third renewal term; by December 1, 2016, in order

to elect the fourth renewal term; and by June 1, 2017, in order to elect the fifth renewal term.

- J. Prior to June 1, 2016, the Parties entered into an agreement effective May 1, 2016 captioned "HUD's Election of All Remaining Renewal Terms under the Third Amendment -and- Fourth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees" ("Fourth Amendment"). Consistent with the applicable notice requirements in Section II A. of the Third Amendment, HUD gave notice in Section II of the Fourth Amendment of its election of the third, fourth, and fifth successive renewal terms under the Third Amendment, thus extending the term of the ACC, as amended under Section III of the Fourth Amendment, through December 31, 2017, subject to the availability of sufficient appropriations, with an option for HUD to terminate the ACC before then by giving PHAs at least 120 days' written notice.
- K. Section III of the Fourth Amendment contained provisions that amended the substantive terms of the original ACC (e.g., by reinstating Incentive-Based Performance Standard ("IBPS") Task #1 ("Management & occupancy reviews") and prescribing a method for calculating the amount by which HUD will compensate PHAs for performing IBPS #1).
- L. Before December 31, 2017, the Parties entered into an agreement effective January 1, 2018 captioned "Fifth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees" ("Fifth Amendment"), which extended the term of the ACC, as amended by the Fourth Amendment, through December 31, 2018 (see Fifth Amendment, Section II.A.), and amended the ACC by requiring the PHA to comply with all Section 8 program regulations and other administrative requirements, as they may be amended from time to time, including those governing or related to Management and Occupancy Reviews ("MORs"), notwithstanding any conflict between such regulations and/or other administrative requirements and the provisions of the ACC (see Fifth Amendment, Section II.B.).
- M. Before December 31, 2018, the Parties entered into an agreement effective January 1, 2019 captioned "Sixth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees" ("Sixth Amendment"), which extended the term of the ACC, as amended by the Fifth Amendment, through June 30, 2019 (see Sixth Amendment, Section II.A.1.), subject to the availability of sufficient appropriations. Section II. further provided for an initial obligation of funds by HUD under the ACC, as amended, and permitted HUD to obligate funds for the remaining portions of the six (6)-month extension term on an incremental basis.

- N. Before June 30, 2019, the Parties entered into an agreement effective July 1, 2019 captioned “Seventh Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Seventh Amendment”), which extended the term of the ACC, as amended by the Sixth Amendment, through September 30, 2019 (see Seventh Amendment, Section II.A.1.), subject to the availability of sufficient appropriations. Section II. further provided for an initial obligation of funds by HUD under the ACC, as amended, and permitted HUD to obligate funds for the remaining portions of the three (3)-month extension term on an incremental basis.
- O. In a report accompanying the Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations Bill for 2019, the House Committee on Appropriations expressed concerns about the relationship between the fees that “PBCAs earn and the cost of performance and directed HUD “to . . . re-negotiate the current [PBCA] contracts to achieve savings while ensuring all important tasks are included.” H.R. Rep. 115-750, at 92 (June 12, 2018). Likewise, the Conference Committee for the Omnibus Fiscal Year 2019 Appropriations Act contained language encouraging HUD “to work with . . . [PBCAs] to identify cost savings while ensuring continuation of all necessary tasks.” H.R. Rep. 116-9, at 923 (Feb. 13, 2019).
- P. Before September 30, 2019, the Parties entered into an agreement effective October 1, 2019 captioned “Eighth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Eighth Amendment”), which extended the term of the ACC, as previously amended by the Seventh Amendment and as further amended by the Eighth Amendment, through January 31, 2021 with the option by HUD to further extend it for up to two additional and successive terms of six (6) calendar months each, subject to the availability of sufficient appropriations and other conditions, as stated in the Eighth Amendment.
- Q. During the term of the Eighth Amendment, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. 116-136 (approved March 27, 2020), Division B—Emergency Appropriations for Coronavirus Health Response and Agency Operations, Title XII of which provides for an additional amount of \$1,000,000,000 under the heading “Housing Programs – Project-Based Rental Assistance” “to prevent, prepare for, and respond to coronavirus, including to provide additional funds to maintain normal operations and take other necessary actions during the period that the program is impacted by coronavirus, for assistance to owners or sponsors of properties receiving project-based assistance pursuant to

section 8 of the United States Housing Act of 1937" ("Supplemental Appropriation").

R. The purpose of this Ninth Amendment is to task the PHA with processing requests for funds under the Supplemental Appropriation from owners of Section 8 properties for permissible expenditures in accordance with the Supplemental Appropriation and with HUD regulations and other requirements, including requirements as stated in HUD directives, handbooks, notices, forms, memoranda, or postings on HUD's website, as such requirements may be revised from time to time, and to provide for a corresponding fee structure for the PHA's performance of this task. Each disbursement of funds shall be referred to herein as a COVID-19 Supplemental Payment ("CSP").

S. Each reference to the ACC in the remaining portions of this Ninth Amendment is to the original ACC, as amended by the Eighth Amendment unless otherwise stated.

II. AMENDMENT. Notwithstanding any provision of the ACC to the contrary, the Parties agree to amend and hereby do amend the ACC as follows:

A. The PHA shall collect, analyze, and verify CSP requests from owners of Section 8 projects in accordance with HUD regulations and other requirements, including requirements as stated in HUD directives, handbooks, notices, forms, memoranda, or postings on HUD's website, as such requirements may be revised from time to time.

B. In discharging its responsibilities as set forth herein, the PHA shall require the owner to provide all information that HUD determines to be necessary on one or more forms that HUD may prescribe or approve for the purpose of allowing owners to request a CSP.

C. CSP requests for amounts within standard payment thresholds, as defined in forthcoming HUD guidance, will be reviewed and either approved or denied by the PHA. CSP requests for amounts exceeding the standard threshold will be reviewed by the PHA before submission to HUD for approval or denial.

D. The PHA shall enter data for all CSP requests into a spreadsheet prescribed or approved by HUD for the purpose of monitoring CSPs and facilitating funding actions by HUD as needed to obligate and disburse approved CSP amounts. All PHA CSP approvals are contingent on the availability of

sufficient appropriations, as determined solely by HUD upon receipt of CSP request data from the PHA.

- E. The PHA shall submit the spreadsheet and owner request forms to HUD for evaluation by HUD. All CSPs shall be separate and distinct from the process by which HUD transmits housing assistance payments to the PHA through the monthly vouchering system under HUD's Tenant Rental Assistance Certification System ("TRACS").
- F. HUD shall provide all CSP amounts to the PHA via electronic funds transfer (EFT). Before authorizing any EFT, however, HUD shall notify the PHA of any modifications that it makes to the CSP amounts submitted by the PHA.
- G. The PHA shall disburse CSPs by EFT to the owner no later than the first business day of the month following the month in which the PHA receives the CSP from HUD, subject to the following sentence. Should a PHA receive a CSP with fewer than five (5) business days remaining in the calendar month, the PHA must disburse the CSP to the owner not more than five (5) business after receipt of funds from HUD.
- H. Subject to the availability of sufficient appropriations, HUD shall compensate the PHA as follows: (1) \$150 for each CSP that the PHA processes within ten (10) business days of the day after the date on which it receives the CSP request from the owner; and (2) \$75 for each CSP that the PHA processes between the eleventh (11th) and the twentieth (20th) business day of the day after the date on which it receives the CSP request from the owner.
- I. For each CSP request that the PHA fails to process by the twentieth (20th) business day after the date on which it receives the request from the owner, the PHA shall receive a deduction in fees of \$150.
- J. HUD will allow Section 8 owners to submit a CSP request to the PHA only during a date range that HUD will specify in forthcoming guidance. Within five (5) business days of the submission deadline (i.e., the last day of the specified date range), the PHA shall notify HUD if it lacks the capacity to complete processing by the tenth (10th) business day after the submission deadline of all received CSP requests. In this event, the PHA shall provide HUD an estimate of the number of CSP requests that it will be unable to process by such tenth (10th) business day ("excess CSP requests"). Upon receiving such notification, HUD may require the PHA to forward its excess CSP requests, or a portion thereof as determined by HUD in consultation with the PHA, to the HUD Satellite or Regional Office so that HUD may ensure

that they are processed timely. For any CSP requests that the PHA forwards to HUD, as HUD may require pursuant to the preceding sentence, HUD will compensate the PHA in the amount of \$50 for each such request.

- K. If the PHA provides HUD the notification required in the preceding paragraph, HUD will consider the number of CSP requests received by the PHA relative to the number of HAP contracts in its portfolio and may, after consultation with the PHA but in HUD's sole discretion, extend the timeframe stated in Paragraph H during which the PHA must process the CSP requests that it has received in order to receive full compensation and/or to avoid a deduction in fees, as stated therein. Such extensions will be granted only in case of an exceptionally high CSP request volume, as determined solely by HUD.
- L. Unless HUD authorizes such billing on a subsequent month's invoice, the PHA shall bill HUD for its processing of the CSP requests that it receives in Federal fiscal year 2020 on its September 2020 monthly invoice. The PHA's billing practices for CSP processing shall be consistent with the payment structure and related requirements identified in this Ninth Amendment.
- M. If appropriations are made available to provide further monetary relief for COVID-19 related expenses for owners of Section 8 properties, the PHA and HUD shall follow the procedures established in this Ninth Amendment unless HUD otherwise directs in writing.

III. INCONSISTENCY WITH ACC

- A. In the event of any inconsistency between the terms of the ACC and the terms of this Ninth Amendment, the terms of this Ninth Amendment shall govern.
- B. All terms of the ACC that are not inconsistent with the terms and provisions of this Ninth Amendment shall continue in full force and effect.

IV. ALL OTHER TERMS

All other terms of the ACC shall remain the same.

V. EFFECTIVE DATE

This Ninth Amendment shall become effective on July 20, 2020.

Signature Page

PUBLIC HOUSING AGENCY

Name of PHA

(Print or Type)

Geographic Area Served:

(Print or Type)

By: _____

Signature of authorized representative

Name and official title (Print or Type)

Date (mm/dd/yyyy) (Print or Type)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: _____

Signature of authorized representative

C. Lamar Seats, Deputy Assistant Secretary for Multifamily Housing Programs

Date (mm/dd/yyyy) (Print or Type)